

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 HERMELINDO OLEA,
12 CDCR #AA5972,

13 Plaintiff,

14 vs.
15 SAN DIEGO COUNTY SHERIFF, et al.,

16 Defendants.
17

18 Civil No. 09-2439 LAB (BLM)

19
20 **ORDER DENYING MOTION TO
PROCEED IN *FORMA PAUPERIS*
AND DISMISSING CASE
WITHOUT PREJUDICE
PURSUANT TO
28 U.S.C. § 1915(a)**
[Doc. No. 2]

21 Hermelindo Olea (“Plaintiff”), currently incarcerated at the Richard J. Donovan
22 Correctional Facility located in San Diego, California, and proceeding pro se, has submitted a
23 civil rights Complaint pursuant to 28 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing
24 fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma*
25 *Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

26 / / /

27 / / /

28 / / /

I.

MOTION TO PROCEED IFP

3 All parties instituting any civil action, suit or proceeding in a district court of the United
4 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
5 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is
6 granted leave to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a). *See*
7 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176,
8 1177 (9th Cir. 1999). Prisoners granted leave to proceed IFP however, remain obligated to pay
9 the entire fee in installments, regardless of whether the action is ultimately dismissed for any
10 reason. *See* 28 U.S.C. § 1915(b)(1) & (2).

11 Prisoners seeking leave to proceed IFP must also submit a “certified copy of the trust fund
12 account statement (or institutional equivalent) for the prisoner for the 6-month period
13 immediately preceding the filing of the complaint....” 28 U.S.C. § 1915(a)(2). From the
14 certified trust account statement, the Court must assess an initial payment of 20% of (a) the
15 average monthly deposits in the account for the past six months, or (b) the average monthly
16 balance in the account for the past six months, whichever is greater, unless the prisoner has no
17 assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see also Taylor v. Delatoore*, 281 F.3d 844, 850 (9th
18 Cir. 2002). Thereafter, the institution having custody of the prisoner must collect subsequent
19 payments, assessed at 20% of the preceding month’s income, in any month in which the
20 prisoner’s account exceeds \$10, and forward those payments to the Court until the entire filing
21 fee is paid. *See* 28 U.S.C. § 1915(b)(2).

22 While Plaintiff has filed a Motion to Proceed IFP in this matter pursuant to 28 U.S.C.
23 § 1915(a), he has not attached a certified copy of his prison trust account statement for the 6-
24 month period immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2);
25 S.D. CAL. CIVLR 3.2. Section 1915(a)(2) clearly mandates that prisoners “seeking to bring a
26 civil action ...without prepayment of fees ... *shall* submit a certified copy of the trust fund
27 account statement (or institutional equivalent) ... for the 6-month period immediately preceding
28 the filing of the complaint.” 28 U.S.C. § 1915(a)(2) (emphasis added).

Without Plaintiff's trust account statement, the Court is simply unable to assess the appropriate amount of the filing fee required to initiate this action. *See* 28 U.S.C. § 1915(b)(1). Therefore, Plaintiff's Motion to Proceed IFP must be DENIED.

II.

CONCLUSION AND ORDER

6 For the reasons set forth above, **IT IS ORDERED** that:

7 (1) Plaintiff's Motion to Proceed IFP [Doc. No. 2] is **DENIED**.

8 (2) This action is **DISMISSED** without prejudice for failure to prepay the \$350 filing

9 fee mandated by 28 U.S.C. § 1914(a), and for failure to successfully move to proceed IFP

10 pursuant to 28 U.S.C. § 1915(a).

11 (3) Plaintiff if **GRANTED** forty five (45) days from the date this Order is Filed to

12 either: (1) pay the entire \$350 filing fee, **or** (2) file a new Motion to Proceed IFP, *which*

13 *includes a certified copy of his trust account statement for the 6-month period preceding the*

14 *filings of his Complaint* pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).

15 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with a
16 Court-approved form “Motion and Declaration in Support of Motion to Proceed IFP” in this
17 matter. If Plaintiff neither pays the \$350 filing fee in full nor sufficiently completes and files
18 the attached Motion to Proceed IFP, together with a certified copy of his prison trust account
19 statement within 45 days, this action shall remain closed without further Order of the Court.

21 | DATED: December 4, 2009

Larry A. Bunn

HONORABLE LARRY ALAN BURNS
United States District Judge